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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

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DEC 17 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Re: Deployment of Wireline Services Offering Advanced
Telecommunications Capability, CC Docket No. 98-147**

Dear Ms. Salas:

Yesterday, on behalf of Qwest Communications Corporation ("Qwest"), the undersigned of Hogan and Hartson L.L.P.; Jane Kunka, Manager, Public Policy, Qwest; and Timothy Burke, Director of Access & Local Services, met with Larry Strickling, Chief, Common Carrier Bureau; Jordan Goldstein, Legal Counsel, Common Carrier Bureau; and Jonathan Askin of the Policy and Program Planning Division, Common Carrier Bureau, regarding the referenced proceeding.

In the meeting Qwest emphasized the importance of preserving competitors' ability to access all local network capabilities, including all advanced capabilities, if consumers are to have a real choice of broadband service providers. Qwest underscored the prohibitive cost of collocating xDSL equipment in every central office, and obtaining local transport from every central office, which would be necessary under the Commission's separate affiliate proposal (even assuming that the incumbent local exchange carriers ("ILECs") implement improvements in

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collocation and operations support systems). 1/ Qwest also noted the legal impediments to the NPRM separate affiliate plan. Qwest proposed that, to the extent the Commission adopts a separate affiliate structure, the Commission adopt a different version of its plan to accommodate these concerns.

Specifically, Qwest discussed the option of permitting the ILECs to provide only *retail* advanced services through a separate affiliate, free from Section 251(c) obligations, with the affiliate employing ILEC unbundled elements. 2/ Under this alternative, the ILECs would not be allowed to make local network investment through the unregulated separate affiliate, at least initially, thereby leaving the advanced local network capabilities in the ILEC, where they would be subject to state and federal regulation to meet public interest requirements (including but not limited to the competitive goals of Section 251). Over time, as improved collocation, operations support systems, and access to network elements is made available, and as competitors begin to provide advanced services on a broad basis, the Commission may then consider whether it is appropriate to permit the ILEC affiliate to make investments in advanced network capabilities free from Section 251(c) obligations (pursuant to the Act's Section 10 forbearance provision). This forbearance could be granted in stages if demonstrated market conditions suggest that certain market segments or geographic areas can safely be developed sooner than others.

1/ See Qwest Initial Comments in response to NPRM in CC Docket No. 98-147 (September 25, 1998) at 8-18 (Qwest Initial Comments).

2/ Id. at 40-41 & n.64.

In the meeting, Qwest distinguished the alternative separate affiliate proposal set forth in BellSouth's December 9, 1998, ex parte notice in this docket. 3/ The BellSouth proposal, which Qwest strongly opposes, differs from Qwest's proposed alternative in many ways. The following are only a few of the legal and policy problems with BellSouth's proposal:

- Under BellSouth's proposal the ILEC's provision of "advanced technologies" would not be subject to Section 251(c)(3). 4/
- BellSouth's proposal would permit the separate affiliate to invest in network facilities free from Section 251(c) obligations. 5/
- The ILEC could transfer its advanced services investment and customer base to the affiliate. 6/
- The separation requirements in BellSouth's proposal (which are patterned on the Competitive Carrier model) are far weaker than those the FCC had proposed, and are weaker still in comparison with the safeguards advocated by Qwest in its comments. 7/
- The separation requirements would sunset. 8/

3/ Letter from David G. Frolio, BellSouth to Magalie Salas, December 9, 1998, attaching Letter from Robert T. Blau, BellSouth, to Larry Strickling, December 8, 1998 ("BellSouth ex parte").

4/ BellSouth ex parte, attachment at 3 (Section 5(c)).

5/ Id. at 1, 2 (Sections 2(c), 3(b)).

6/ Id. at 2 (Section 2(e)).

7/ Id. at 2 (Section 3(c)).

8/ Id. at 2 (Section 3(d)).

- The BellSouth proposal contemplates very close relations between the network company and its affiliate, which could include, *inter alia*, joint marketing and the sharing of “professional network operations services.” 9/
- The affiliate could negotiate agreements with the BellSouth network company free from nondiscrimination requirements. 10/ As BellSouth itself recognizes, this would allow BellSouth and its affiliate to sell each other services back and forth, with the affiliate’s offerings unregulated, thus creating the potential for a regulatory shell game. 11/

In the meeting, Qwest also discussed the importance of broadly defining the network elements that competitors may employ under Section 251(c)(3) of the Act. As discussed in detail in Qwest’s comments, it is essential that the Commission clarify that the loop network element includes the electronics that make the loop a transmission facility. 12/ Thus, for example, competitors must have access to xDSL-equipped loops, DS-1, DS-3, and OC-N loops as network elements. 13/ Qwest also has emphasized in its comments the importance of access to dark fiber as a network element. 14/ In addition, Qwest emphasized the need for network element access to interoffice packet transport and switching. 15/

The discussion also included the points made in the attached handout.

9/ Id. at 2 (Section 2(d)).

10/ Id. at 1 (Section 2(d)).

11/ Id. at 1-2 (Section 2(d)(i)).

12/ See Qwest Initial Comments at 63-65; Reply Comments (October 16, 1998) at 39-40.

13/ Id. at 64-65.

14/ Id. at 66-68; Reply Comments at 41-42.

15/ Id. at 64; Reply Comments at 38-39.

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I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda L. Oliver". The signature is fluid and cursive, with the first name "Linda" and last name "Oliver" clearly distinguishable.

Linda L. Oliver

Counsel for Qwest Communications
Corporation

Enclosure

cc: Larry Strickling
Jordan Goldstein
Jonathan Askin